



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/593,423

09/19/2006

Bob Briscoe

36-2010

1267

23117

7590

04/04/2012

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

EXAMINER

GHOWRWAL, OMAR J

ART UNIT

PAPER NUMBER

2463

NOTIFICATION DATE

DELIVERY MODE

04/04/2012

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOMAIL@nixonvan.com
clm@nixonvan.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/593,423	Applicant(s) BRISCOE ET AL.
	Examiner OMAR GHOWRWAL	Art Unit 2463

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 March 2012 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

NO NOTICE OF APPEAL FILED

1. ☒ The reply was filed after a final rejection. No Notice of Appeal has been filed. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance;

(2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114 if this is a utility or plant application. Note that RCEs are not permitted in design applications. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires _____ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

Examiner Note: If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) or (c) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendments filed after a final rejection, but prior to the date of filing a brief, will not be entered because

a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

b) ☐ They raise the issue of new matter (see NOTE below);

c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): (a) ☒ will not be entered, or (b) ☐ will be entered, and an explanation of how the new or amended claims would be rejected is provided below or appended.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing the Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

STATUS OF CLAIMS

14. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

/Derrick W Ferris/ Supervisory Patent Examiner, Art Unit 2478	/O. G./ Examiner, Art Unit 2463
--	------------------------------------

Continuation of 3. NOTE: Independent claims 24, 26 and 28 have been amended such that their scopes have changed. Regarding the allegations that the Applicant amended the claims on 11/16/11 in accordance with the Examiner's recommendation to overcome objections from the non-Final action 8/18/11, and thus the Final rejection of 1/17/12 would be premature, this is not true. The Applicant had amended the claims differently than what the Examiner suggested, which changed the scope of the claims and necessitated a new search. For example, the Examiner suggested for claim 1 (and similarly other independent claims) to amend "the initial condition assigned in respect of previous data units" to "the initial condition assigned in respect of data provided by said provider node", however the Applicant amended it to "the initial condition assigned in respect of previous data provided by said provider node", which differs from the Examiner's suggestion because it pertains to "previous data" whereas the Examiner's suggestion did not; and thus changes the scope of the claim.

In other words, if Applicant's amendment to the claim is not exactly what the Examiner suggested, it is considered a new amendment. The Examiner's interpretation of the independent claims in the 8/18/11 non-Final action was different than the Applicant's intention, and this was reflected in the Examiner's suggestion to amend the claims to clarify what the Applicant meant by the previous language. The Applicant's clarification about the amended passage differed than the Examiner's interpretation and changed the scope of the claim. Had there been no dispute by the Applicant about the Examiner's interpretation, the Applicant could have argued back and not amended the claims on 11/16/11. For these reasons, the Examiner maintains that the Final rejection on 1/17/12 was proper.

Furthermore, Applicant has further amended independent claims 24, 26, and 28. Despite Applicant's assertion that the amendments are corrective in nature due to the claims not being exactly as previously intended by Applicant, these amendments do change the scope of the claims and require further searching.

Continuation of 11. does NOT place the application in condition for allowance because: Independent claims 24, 26 and 28 have been amended such that their scopes have changed. Regarding the allegations that the Applicant amended the claims on 11/16/11 in accordance with the Examiner's recommendation to overcome objections from the non-Final action 8/18/11, and thus the Final rejection of 1/17/12 would be premature, this is not true. The Applicant had amended the claims differently than what the Examiner suggested, which changed the scope of the claims and necessitated a new search. For example, the Examiner suggested for claim 1 (and similarly other independent claims) to amend "the initial condition assigned in respect of previous data units" to "the initial condition assigned in respect of data provided by said provider node", however the Applicant amended it to "the initial condition assigned in respect of previous data provided by said provider node", which differs from the Examiner's suggestion because it pertains to "previous data" whereas the Examiner's suggestion did not; and thus changes the scope of the claim.

In other words, if Applicant's amendment to the claim is not exactly what the Examiner suggested, it is considered a new amendment. The Examiner's interpretation of the independent claims in the 8/18/11 non-Final action was different than the Applicant's intention, and this was reflected in the Examiner's suggestion to amend the claims to clarify what the Applicant meant by the previous language. The Applicant's clarification about the amended passage differed than the Examiner's interpretation and changed the scope of the claim. Had there been no dispute by the Applicant about the Examiner's interpretation, the Applicant could have argued back and not amended the claims on 11/16/11. For these reasons, the Examiner maintains that the Final rejection on 1/17/12 was proper.

Furthermore, Applicant has further amended independent claims 24, 26, and 28. Despite Applicant's assertion that the amendments are corrective in nature due to the claims not being exactly as previously intended by Applicant, these amendments do change the scope of the claims and require further searching.